

104TH CONGRESS  
2D SESSION

# S. 2156

To protect the rights of the States and the people from abuse by the Federal Government; to strengthen the partnership and the intergovernmental relationship between State and Federal Governments; to restrain Federal agencies from exceeding their authority; to enforce the Tenth Amendment to the Constitution; and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 1996

Mr. STEVENS introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

To protect the rights of the States and the people from abuse by the Federal Government; to strengthen the partnership and the intergovernmental relationship between State and Federal Governments; to restrain Federal agencies from exceeding their authority; to enforce the Tenth Amendment to the Constitution; and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be referred to as the “Tenth Amend-  
5       ment Enforcement Act of 1996”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) in most areas of governmental concern,  
4 State governments possess both the Constitutional  
5 authority and the competence to discern the needs  
6 and the desires of the People and to govern accord-  
7 ingly;

8 (2) Federal laws and agency regulations, which  
9 have interfered with State powers in areas of State  
10 jurisdiction, should be restricted to powers delegated  
11 to the Federal Government by the Constitution;

12 (3) the framers of the Constitution intended to  
13 bestow upon the Federal Government only limited  
14 authority over the States and the people;

15 (4) under the Tenth Amendment to the Con-  
16 stitution, the powers not delegated to the United  
17 States by the Constitution, nor prohibited by it to  
18 the States, are reserved to the States respectively, or  
19 to the people; and

20 (5) the courts, which have in general construed  
21 the Tenth Amendment not to restrain the Federal  
22 Government's power to act in areas of State jurisdic-  
23 tion, should be directed to strictly construe Federal  
24 laws and regulations which interfere with State pow-  
25 ers with a presumption in favor of State authority  
26 and against Federal preemption.

1 **SEC. 3. CONGRESSIONAL DECLARATION.**

2 (a) IN GENERAL.—On or after January 1, 1997, any  
3 statute enacted by Congress shall include a declaration—

4 (1) that authority to govern in the area ad-  
5 dressed by the statute is delegated to Congress by  
6 the Constitution, including a citation to the specific  
7 Constitutional authority relied upon;

8 (2) if the statute interferes with State powers  
9 or preempts any State or local government law, reg-  
10 ulation or ordinance, that Congress specifically finds  
11 that the Federal Government is the better level of  
12 government to govern in the area addressed by the  
13 statute; and

14 (3) if the statute interferes with State powers  
15 or preempts any State or local government law, reg-  
16 ulation or ordinance, that Congress specifically in-  
17 tends to interfere with State powers or preempt  
18 State or local government law, regulation, or ordi-  
19 nance, and that such preemption is necessary.

20 (b) FACTUAL FINDINGS.—The Congress shall make  
21 specific factual findings in support of the declarations de-  
22 scribed in this section.

23 **SEC. 4. POINT OF ORDER.**

24 (a) IN GENERAL.—It shall not be in order in either  
25 the Senate or House of Representatives to consider any  
26 bill, joint resolution, or amendment that does not include

1 a declaration of Congressional intent as required under  
2 section 3.

3 (b) RULEMAKING.—This section is enacted—

4 (1) as an exercise of the rulemaking power of  
5 the Senate and House of Representatives, and as  
6 such, it is deemed a part of the rules of the Senate  
7 and House of Representatives, but is applicable only  
8 with respect to the matters described in section 3  
9 and supersedes other rules of the Senate or House  
10 of Representatives only to the extent that such sec-  
11 tions are inconsistent with such rules; and

12 (2) with full recognition of the constitutional  
13 right of the Senate or House of Representatives to  
14 change such rules at any time, in the same manner  
15 as in the case of any rule of the Senate or House  
16 of Representatives.

17 **SEC. 5. ANNUAL REPORT ON STATUTORY PREEMPTION.**

18 (a) REPORT.—Within 90 days after each Congress  
19 adjourns sine die, the Congressional Research Service  
20 shall prepare and make available to the public a report  
21 on the extent of Federal statutory preemption of State and  
22 local government powers enacted into law during the pre-  
23 ceding Congress or adopted through judicial interpretation  
24 of Federal statutes.

25 (b) CONTENTS.—The report shall contain—

1           (1) a cumulative list of the Federal statutes  
2 preempting, in whole or in part, State and local gov-  
3 ernment powers;

4           (2) a summary of Federal legislation enacted  
5 during the previous Congress preempting, in whole  
6 or in part, State and local government powers;

7           (3) an overview of recent court cases addressing  
8 Federal preemption issues; and

9           (4) other information the Director of the Con-  
10 gressional Research Service determines appropriate.

11       (c) TRANSMITTAL.—Copies of the report shall be sent  
12 to the President and the chairman of the appropriate com-  
13 mittees in the Senate and House of Representatives.

14 **SEC. 6. EXECUTIVE PREEMPTION OF STATE LAW.**

15       (a) IN GENERAL.—Chapter 5 of title 5, United  
16 States Code, is amended by inserting after section 559 the  
17 following new section:

18 **“SEC. 560. PREEMPTION OF STATE LAW.**

19       “(a) No executive department or agency or independ-  
20 ent agency shall construe any statutory authorization to  
21 issue regulations as authorizing preemption of State law  
22 or local ordinance by rulemaking or other agency action  
23 unless—

24           “(1) the statute expressly authorizes issuance of  
25 preemptive regulations; and

1           “(2) the executive department, agency or inde-  
2           pendent agency concludes that the exercise of State  
3           power directly conflicts with the exercise of Federal  
4           power under the Federal statute, such that the State  
5           statutes and the Federal rule promulgated under the  
6           Federal statute cannot be reconciled or consistently  
7           stand together.

8           “(b) Any regulatory preemption of State law shall be  
9           narrowly tailored to achieve the objectives of the statute  
10          pursuant to which the regulations are promulgated and  
11          shall explicitly describe the scope of preemption.

12          “(c)(1) When an executive department or agency or  
13          independent agency proposes to act through rulemaking  
14          or other agency action to preempt State law, the depart-  
15          ment or agency shall provide all affected States notice and  
16          an opportunity for meaningful and timely input by duly  
17          elected or appointed State and local government officials  
18          or their designated representatives in the proceedings.

19          “(2) The notice of proposed rulemaking shall be for-  
20          warded to the Governor, the Attorney General and the pre-  
21          siding officer of each chamber of the legislature of each  
22          State setting forth the extent and purpose of the preemp-  
23          tion.

1       “(3) In the table of contents of each Federal Reg-  
2 ister, there shall be a separate list of preemptive regula-  
3 tions contained within that Register.

4       “(4) The Federal Advisory Committee Act (5 U.S.C.  
5 App.) shall not apply to participation in rulemaking or  
6 other agency action by duly elected or appointed State and  
7 local government officials or their designated representa-  
8 tives acting in their official capacities.

9       “(d) Unless a final executive department or agency  
10 or independent agency rule or regulation contains an ex-  
11 plicit provision declaring the Federal Government’s intent  
12 to preempt State or local government powers and an ex-  
13 plicit description of the extent and purpose of that pre-  
14 emption, the rule or regulation shall not be construed to  
15 preempt any State or local government law, ordinance or  
16 regulation.

17       “(e)(1) Each executive department or agency or inde-  
18 pendent agency shall review the rules and regulations is-  
19 sued by the department or agency that preempt, in whole  
20 or in part, State or local government powers. Each execu-  
21 tive department or agency or independent agency shall  
22 publish in the Federal Register a plan for such review.  
23 Such plan may be amended by the department or agency  
24 at any time by publishing a revision in the Federal Reg-  
25 ister.

1       “(2) The purpose of the review under paragraph (1)  
 2 shall be to determine whether and to what extent such  
 3 rules are to continue without change, consistent with the  
 4 stated objectives of the applicable statutes, or are to be  
 5 altered or repealed to minimize the effect of the rules on  
 6 State or local government powers.

7       “(3) The plan under paragraph (1) shall provide for  
 8 the review of all such department or agency rules and reg-  
 9 ulations within 10 years after the date of publication of  
 10 such rules and regulations as final rules. For rules and  
 11 regulations in effect more than 10 years on the effective  
 12 date of this section, the plan shall provide for review with-  
 13 in 3 years after such effective date.

14       “(f) Any Federal rule or regulation promulgated after  
 15 January 1, 1997, that is promulgated in a manner incon-  
 16 sistent with this section shall not be binding on any State  
 17 or local government, and shall not preempt any State or  
 18 local government law, ordinance, or regulation.”.

19       (b) CONFORMING AMENDMENT.—The table of sec-  
 20 tions for chapter 5 of title 5, United States Code, is  
 21 amended by adding after the item for section 559 the fol-  
 22 lowing:

“560. Preemption of State law.”.

## 23 **SEC. 7. CONSTRUCTION.**

24       (a) IN GENERAL.—No statute, or rule promulgated  
 25 under such statute, enacted after the date of enactment



1 of this Act, shall be construed by courts or other adjudica-  
 2 tive entities to preempt, in whole or in part, any State  
 3 or local government law, ordinance or regulation unless  
 4 the statute, or rule promulgated under such statute, con-  
 5 tains an explicit declaration of intent to preempt, or unless  
 6 there is a direct conflict between such statute and a State  
 7 or local government law, ordinance, or regulation, such  
 8 that the two cannot be reconciled or consistently stand to-  
 9 gether.

10 (b) CONSTRUCTION IN FAVOR OF STATES AND PEO-  
 11 PLE.—Notwithstanding any other provisions of law, any  
 12 ambiguities in this Act, or in any other law of the United  
 13 States, shall be construed in favor of preserving the au-  
 14 thority of the States and the people.

15 (c) SEVERABILITY.—If any provision of this Act, or  
 16 the application thereof to any person or circumstance, is  
 17 held invalid, the validity of the remainder of the Act and  
 18 the application of such provision to other persons and cir-  
 19 cumstances shall not be affected thereby.

20 **SEC. 8. APPROPRIATION BY STATE LEGISLATURES.**

21 Any funds received by a State under Federal law  
 22 shall be subject to appropriation by the State legislature,  
 23 consistent with the terms and conditions required under  
 24 such applicable provisions of law.

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